

## REMARKS

Reconsideration of the application in light of the amendments and the following remarks is respectfully requested.

### Status of the Claims

Claims 1-15, 17-28 are pending. Claim 16 has been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 1, 3, 5-7, 11-15, 17-24 and 28 have been amended. No new matter has been added.

### Allowable Subject Matter

Applicants appreciatively acknowledge the Examiner's allowance of claims 1-11, and the indication of allowable subject matter in claims 17-22.

Allowed claims 1, 3, 5-7 and 11 have been amended so as to more distinctly claim the invention. Applicants submit that amended claims 1, 3, 5-7 and 11 remain in condition for allowance.

### Rejection Under 35 U.S.C. § 102

Claims 12, 14-16, 23 and 26-27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Japanese Published Application JP 11-122153 to Shoichi. Claim 16 has been cancelled, thus rendering the rejection moot with respect to claim 16.

Shoichi discloses two antennas 1, 2 that are selected by switch circuit 3. The levels received by antennas 1, 2 for respective hopping frequencies f1-fn are detected by reception level detector 4. A control part 7 compares the stored reception levels of the two antennas, and stores the stronger antenna in the memory part 6. (Shoichi, Figure and Abstract.) Prior to a data transmission period, a preamble period is set up. It is during this preamble period where Shoichi discloses detecting the intensity of the received signals. Additionally, control part 7 sets a timer

section to expire during the data transmission period, so that at the expiration of the timer the intensity level is detected and updated. (Shoichi, ¶¶ 0004-0007.)

Claim 12 has been amended to recite that “signal information of a hopping frequency of a current channel is updated each time said hopping frequency is switched.” In the claimed invention, updates to the signal information occurs when the hopping frequency is switched. In contrast, Shoichi discloses updating at the expiration of a timer. Shoichi does not disclose any relationship between the expiration of the timer and the occurrence of a switch in the hopping frequency.

Applicants submit that for the foregoing reasons, Shoichi does not disclose each and every element of amended claim 12. Thus, Shoichi does not anticipate amended claim 12. Claims 13-15 and 17-28 depend from claim 12. Applicants submit that claims 13-15 and 17-28 are patentable over Shoichi for at least the same reasons as claim 12. Withdrawal and reconsideration of the rejection is requested.

### **Rejection Under 35 U.S.C. § 103**

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shoichi in view of U.S. Patent No. 5,561,673 to Takai et al. (“Takai”).

The Examiner contends that Shoichi discloses most of the features of claim 13. However, the Examiner acknowledges that Shoichi does not disclose that the signal information is “at least one combination of a value shoeing received intensity, a value shoeing quality of receiving conditions, and a receiving error detection result” as recited in claim 13. The Examiner cites Takai as disclosing that “signal information is a combination of intensity (RSSI) and error (BER) detection (see Fig. 11A and Abstract).” (Detailed Action, item 5, pages 4-5.)

The Examiner states that it would have been obvious for a person of ordinary skill in the art at the time of the invention to combine Shoichi and Takai to achieve the invention of claim 13.

Claim 13 depends from amended claim 12, and recites the features of claim 12 as if set forth therein. Applicants submit that Shoichi and Takai neither discloses nor suggests, singly or in combination, the features of claim 13 for the same reasons as discussed above for amended claim 12. Therefore, Shoichi and Takai does not render claim 13 obvious, and the Examiner has not met the burden of establishing a *prima facie* case of obviousness with respect to claim 13. Withdrawal and reconsideration of the rejection is requested.

Claims 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shoichi in view of U.S. Patent No. 6,594,475 to Anvekar et al. (“Anvekar”).

The Examiner contends that Shoichi discloses most of the features of claims 24-25. However, the Examiner acknowledges that Shoichi does not disclose a unit operable to select from “at least first and second communications paths with a uniform probability in an initial condition” as recited in claim 24. The Examiner also acknowledges that Shoichi does not disclose a unit operable to return “to the initial condition if no communications are conducted for a prescribed time” as recited in claim 25. The Examiner cites Anvekar as disclosing “selecting an antenna in an initial condition is based on uniform probability (the antenna located closed to the center of the cell, see col. 4, lines 44-48)” and further disclosing “to return the switching to the initial condition when communication are conducted for a prescribed period as disclosed by Anvekar (see col. 4. lines 30-42).” (Detailed Action, item 6, page 5.) The Examiner states that it would have been obvious for a person of ordinary skill in the art at the time of the invention to combine Shoichi and Anvekar to achieve the invention of claim 24 and 25.

Claim 24 recites that communication paths are selected “with a uniform probability in an initial condition.” In contrast, Anvekar discloses that when starting communication for the first time between a base station and mobile unit “it is preferable to switch the receiving antennas which is located closest to the center of the pico-cell.” (Anvekar, column 4, lines 43-49.) Thus, antennas near the cell center are often selected, and antennas far from the cell center are selected not nearly as often. Thus, Shoichi and Anvekar neither discloses nor suggest, singly or in combination antenna selection with a “uniform probability in an initial condition” as required by claim 24.

Additionally, claims 24-25 depend from amended claim 12, and recites the features of claim 12 as if set forth therein. Applicants submit that Shoichi and Anvekar neither discloses nor suggests, singly or in combination, the features of claims 24-25 for the same reasons as discussed above with respect to amended claim 12. Therefore, Shoichi and Anvekar does not render claims 24-25 obvious, and the Examiner has not met the burden of establishing a *prima facie* case of obviousness with respect to claims 24-25. Withdrawal and reconsideration of the rejection is requested.

Claim 28 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shoichi in view of U.S. Patent No. 6,563,858 to Fakatselis et al. (“Fakatselis”).

The Examiner contends that Shoichi discloses most of the features of claim 28. However, the Examiner acknowledges that Shoichi does not disclose updating signal information “using ACK/NAK information in a response to the transmission” as recited in amended claim 28. The Examiner cites Fakatselis as disclosing “antenna switching is also based on the ACK/NAK information in a transmission response (see col. 15, line 22-col. 16, line 17).” (Detailed Action, item 7, page 6.) The Examiner states that it would have been obvious for a

person of ordinary skill in the art at the time of the invention to combine Shoichi and Fakatselis to achieve the invention of claim 28.

Claim 28 depends from amended claim 12, and recites the features of claim 12 as if set forth therein. Applicants submit that Shoichi and Fakatselis neither discloses nor suggests, singly or in combination, the features of claim 28 for the same reasons as discussed above for amended claim 12. Therefore, Shoichi and Fakatselis does not render claim 28 obvious, and the Examiner has not met the burden of establishing a *prima facie* case of obviousness with respect to claim 28. Withdrawal and reconsideration of the rejection is requested.

## CONCLUSION

Each and every point raised in the Office Action dated December 16, 2004 has been addressed on the basis of the above amendments and remarks. In view of the foregoing it is believed that claims 1-15, 17-28 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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